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## MOTION FOR A RESOLUTION

further to Oral Question 0063/03

pursuant to Rule 42(5) of the Rules of Procedure

by Klaus–Heiner Lehne, Othmar Karas, Giuseppe Gargani and Stefano Zappalà

on behalf of the PPE–DE Group

on market regulations and competition rules for the liberal professions

**European Parliament resolution on market regulations and competition rules for the liberal professions**

*The European Parliament,*

- having regard to Articles 6, 52, 81, 82 and 86 of the EC Treaty,
- having regard to the articles 45 and 46 of the EC,
- having regard to the European Parliament resolution of 18 January 1994 on the state and organisation of the profession of notary in the Member States of the Community,
- having regard to the European Parliament resolution of 5 April 2001 on scale fees and compulsory tariffs for certain liberal professions, in particular lawyers, and on the particular role and position of the liberal professions in modern society,
- having regard to the judgment of the Court of Justice of 18 June 1998 in Case C-35/96, Commission of the European Communities v Italian Republic,
- having regard to the judgment of the Court of Justice of 30 January 1985 in Case C-123/83, BNIC v Clair,
- having regard to the judgment of the Court of Justice of 12 September 2000 in Joined Cases C-180/98 to C-184/98, Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten,
- having regard to the judgment of the Court of First Instance of 28 March 2001 in Case T-144/99, Institute of Professional Representatives before the European Patent Office v Commission of the European Communities,
- having regard to the judgment of the Court of Justice of 19 February 2002 in Case C-309/99, J.C.J. Wouters, J.W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten,
- having regard to the judgment of the Court of Justice of 19 February 2002 in Case C-35/99, Manuele Arduino,
- having regard to the judgment of the Court of Justice of 12 December 1996 in Case C-3/95, Reisebüro Broede v Gerd Sandker,
- having regard to the judgment of the Court of Justice of 11 July 2002 in Case C-294/00 Deutsche Paracelsus Schulen für Naturheilverfahren GmbH vs Kurt Gräbner,
- having regard to the judgment of the Court of Justice of 30 September 2003 in Case C-47/02, Albert Anker, Klaas Ras and Albertus Snoek v Bundesrepublik Deutschland,

- having regard to the judgment of the Court of Justice of 30 September 2003 in Case C-405/01, *Colegio de Oficiales de la Marina Mercante Española v Administración del Estado*,
  - having regard to Rule 42(5) of the Rules of Procedure,
- A. whereas the liberal professions are one of the pillars of pluralism and independence in society and fulfil roles in the public interest,
  - B. whereas the liberal professions are entrusted with services of particular social and public interest similar to the services of general economic interest within the meaning of Article 86(2) of the EC Treaty, and whereas they are subject to the rules contained in the EC Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them,
  - C. whereas many of the liberal professions deal with matters directly linked to the protection of fundamental rights and the rule of law,
  - D. whereas the liberal professions often hold a legal monopoly for the provision of their services (e.g. doctors for delivering health care services, advocates for pleading in courts, pharmacists for selling drugs),
  - E. whereas the markets for professional services are notable for ‘asymmetrical information’, in that the consumer is rarely in a position to assess the quality of the services provided,
  - F. whereas professional services also generate externalities in the form of losses or benefits for society as a whole. The demand for professional services is often of a derivative nature, which means that their output (a lawyer’s advice, an architect’s plan) is an intermediate good in a longer production chain. The quality of those services therefore constitutes one of the decisive inputs in many sectors of a national economy,
  - G. whereas every profession provides complex services and the nature of those services varies not only between different professions (e.g. architects and doctors) but also within a given profession (e.g. surgeons and psychiatrists). Apparently identical professions may in different States have undergone different types of training and provide services of different natures (architects, notaries). Those differences are evidenced by the difficulty of finding a commonly accepted definition of the professions,
  - H. whereas the markets for professional services cannot be compared to ‘normal markets’, restrictions on access and on certain business practices are necessary to guarantee a high level of quality and public safety in the interest of consumers and society, and members of the professions should not be motivated by considerations of profit alone,
  - I. whereas competition within each profession is in reality strong,
  - J. whereas, for that reason, the Commission has to take account of the particular nature of different branches of the economy, social concerns and, to a certain extent, considerations connected with the pursuit of the public interest,

- K. whereas the notion of ‘undertaking in competition law’ is relative. It has to be established in concreto in every case with regard to the specific activity under scrutiny. So, where an entity simultaneously carries on activities of different kinds, the Commission has to ‘dissociate those activities’: it considers only whether, in respect of the activity under scrutiny, the entity is to be classified as an undertaking or not,
- L. whereas many professions are involved in guaranteeing the necessary quality of those entering the profession. Where the State retains the final decision on the conditions of access, members of the profession nonetheless, especially in the United Kingdom, fix necessary training periods, control the content of studies or set examinations and act as examiners,
- M. whereas some professions are involved in fixing compulsory charges and fees for their services. The maximum fees are fixed by the State after consulting the profession concerned,
- N. whereas in many professions the possibility of exercising the profession in certain business structures is limited. Members of a profession might, for example, be precluded from setting up limited companies or from engaging in partnerships or employment relations with persons from another profession (e.g. lawyers and accountants),
- O. whereas Article 45 of the EC Treaty states that the provisions of the chapter on the rights of establishment shall not apply, as far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority (e.g. civil law notaries),
- P. whereas Article 46 of the EC Treaty allows Member States to introduce restrictions on the freedom of provision of services and of establishment on grounds of public policy, public security or public health. The Court of Justice has also ruled that other restrictions may be introduced in the public interest. It has established a body of case law providing that the obligations which must be met by migrants must be necessary and proportional to the objective to be achieved,
- Q. whereas the Court of justice has also stated that:
- (a) compulsory fees may be allowed provided that they are set by the State, taking account of the general interests,
  - (b) the pursuit of a profession on a combined basis may be prohibited where conflicts of interest between members of different professions may arise (for example lawyers and auditors),
  - (c) with regard to advertising: codes of good practice may rule out adverse criticism of a colleague,
  - (d) regarding registration with social security funds: compulsory registration with pension funds is possible,
  - (e) regarding exclusive rights for certain regulated professions: they are not contrary to

the EC Treaty,

(f) bodies regulating the profession have a margin of discretion in adopting rules they deem adequate and necessary,

1. Reaffirms that the liberal professions are an expression of a democratic fundamental order based on law and, more particularly, an essential element of European societies and communities in their various forms;
2. Acknowledges the importance and the validity of regulations that are established under their own responsibility by professional bodies regulating the profession in order to guarantee the quality of services, to fix special standards of value, to observe those regulations in a professional manner and to include professional ethics;
3. Notes the high qualifications required for the liberal professions, the need to protect those qualifications that distinguish the liberal professions for the benefit of European citizens and the need to establish a specific relationship based on trust between the liberal professions and their clients;
4. Considers that diversities rooted in the culture, legal history, sociology and ethnology of the various professional groups in the Member States need to be respected by applying the principle of subsidiarity;
5. Notes, however, that mutual recognition of professional qualifications remains a key building block of an internal market;
6. Recognises that the manifestation of the traditional values of the liberal professions must adapt to the changing business world and the needs of the modern consumer; restrictions on competition that are necessary for the proper performance of the liberal profession in question are not covered by competition rules;
7. Notes that each activity of the professional association in question has to be looked at separately, so that the rules on competition are applied to the association only when it is acting exclusively in the interests of its members;
8. Points out that a professional body does not constitute either an undertaking or a group of undertakings for the purposes of Article 82 of the EC Treaty;
9. Notes that, in the absence of specific Community rules in the field, each Member State is in principle free to regulate the exercise of the legal profession in its territory and that, for that reason, the rules applicable to the liberal professions may vary greatly from one Member State to another;
10. Considers that the goal of promoting competition in the professions must, in each individual case, be reconciled with the objective of maintaining purely ethical rules specific to each profession;
11. Notes that rules restricting advertising make it possible to avoid introducing systematic enticement into the market;

12. Considers that a system of mandatory prices together with rules guaranteeing high qualifications, competence and moral competence can prevent members of the profession from offering inadequate services, but that it must respect the public interest;
13. Considers that the rules forbidding professions from fixing their fees on the basis of the result obtained could be necessary to protect the independence and integrity of the profession in the interest of the clients, and could have pro-competitive effects;
14. Points out that the specific features of the markets for professional services require some kind of regulation. In economic terms an information problem again arises: the complex nature of those services and their permanent evolution through rapidly changing knowledge and technical developments make it difficult for parliaments and governments to adopt the necessary detailed and up-to-date rules. Self-regulation by knowledgeable members of the professions is often more appropriate since it can react with the necessary flexibility. These rules are in the interest of the quality and functioning of the profession, and do not cater for the interests of individual members. The main challenge for every competition law system is therefore to prevent abuses of regulatory powers without affecting or abolishing the required regulatory autonomy of the professions;
15. Concludes that from a general point of view rules are necessary in the specific context of each profession, in particular those relating to organisation, qualifications, professional ethics, supervision, liability, impartiality and competence of the members of the profession or designed to prevent conflicts of interest and misleading advertising, as they:
  - (a) give end-users the assurance that they are provided with the necessary guarantees in relation to integrity and experience, and
  - (b) are not to be considered to be restrictions on competition;
16. Calls upon the Commission, in its forthcoming proposal on an Internal Market for Services, to take due account of these concerns while ensuring that the possibility for the liberal professions to participate in pan-European Union service delivery is respected;
17. Instructs its President to forward this resolution to the European Commission.